UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:01CR154SNL(MLM)
	)	
FRANK CRABTREE,	)	
	)	
Defendant.	)	

ORDER AND REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This matter is before the court on the motions of the parties. Pretrial matters were referred to the undersigned United States Magistrate Judge under 28 U.S.C. §636(b). Evidentiary Hearings were held on May 22, 2001 and July 26, 2001. This case is set for trial on October 8, 2001.

At the first Evidentiary Hearing, the government presented the testimony of Cale Hoesman, a deputy with the Greene County, Illinois, Sheriff's Department and David Ryan, a detective with the St. Louis County, Missouri, Police Department. At the second Evidentiary Hearing, the government presented the testimony of Det. Ryan. Defendant also testified. Based on the testimony and evidence adduced and having had an opportunity to observe the demeanor and evaluate the credibility of the witnesses, the undersigned makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On July 4, 1999 at approximately 7:00 A.M., Deputy Hoesman received notice of an alarm sounding at the Tri-County Farm Services facility. He immediately responded and while on route, the dispatcher informed him that the manager, Kevin Martin (who is a part-time police officer) was also on the way to the scene. Martin observed persons in a Ford pickup truck attempting to steal anhydrous ammonia. Martin also obtained the Missouri license number of the truck, followed the

truck and relayed the license number and location to Deputy Hoesman. Deputy Hoesman had his dispatcher call the chief of the Greenfield, Illinois, Police Department who was closer to the location and the chief stopped the vehicle. Deputy Hoesman arrived approximately seven to eight minutes later and observed two individuals in a squad car. He had no contact with them at that time.

The persons in the squad car (one of whom was defendant) were taken to the Greene County Jail where Deputy Hoesman read defendant his Miranda rights from a Greene County Sheriff's Department form. (Gov. Ex. 1). The form reads:

Statement of Miranda Rights

1. You have the right to remain silent.

2. Anything you say can and will be used against you in a court of law.

3. You have the right to talk to a lawyer and have him present with you while you are being questioned.

4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.

5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Gov.Ex.1

Deputy Hoesman reviewed each of the rights with defendant and defendant indicated he understood his rights. Although Deputy Hoesman believed defendant had been drinking because there was an odor of alcohol about his person, defendant did not appear intoxicated or otherwise impaired and he responded appropriately to Deputy Hoesman. Immediately below the statement of Miranda rights, the form says:

Waiver of Rights

I have read the above statement of my rights and I understand each of those rights, and having these rights in mind I waive them and willingly make a statement.

Gov.Ex.1.

Defendant signed the waiver portion of the form in Deputy Hoesman's presence. The form is dated 7/4/99. The time is not noted on the form. Defendant then made an oral statement in which he said generally that he was just riding around and pulled into the "Tri-County F.S." to use the restroom. He saw the ammonia tanks, attempted to take some ammonia, the manager showed up and he left. No threats or physical intimidation were employed and no promises or misrepresentations were made to induce defendant to make this statement. Deputy Hoesman stated that based on his experience, he knows that ammonia is one ingredient used in the manufacture of methamphetamine.

Deputy Hoesman then asked defendant if he would reduce his statement to writing. Defendant agreed and Deputy Hoesman handed defendant a Voluntary Statement form used by the Greene County Sheriff's Office. (Gov. Ex. 2) He reviewed the form with defendant and defendant filled in his name, age, date of birth and address. The top part of the form reads:

> Before answering any questions or making any statements [Deputy Cale A. Hoesman #5] a person who identified himself as a Police Officer has duly warned and advised me of my constitutional rights under Miranda. Knowing and understanding these warnings and rights, I voluntarily give the following statement of my own free will, without promise of [sic] hope or [sic] reward, without fear or threat of physical harm, without coercion, favor or offer, without leniency or offer of leniency, by any person or persons.

Gov.Ex.2[1]

Defendant wrote a statement continuing over to a second page in which he again admitted his theft of ammonia from the tanks. Again, no threats, intimidation, promises or misrepresentations were made to defendant to induce him to write the statement.

Because defendant had a Missouri license plate and gave an address in Ballwin, Missouri, Deputy Hoesman called the St. Louis County Police. He was put in touch with Detective Dave Ryan and relayed the events of 7/4/99, asked if they had any information on defendant and asked if there

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[1] The portion in brackets is filled in by hand. This is true of this exhibit as well as all the others quoted in this Report and Recommendation.

was anything they could do to help. Detective Ryan, with the St. Louis County Police Department for seven years, has had training and experience with methamphetamine labs and is familiar with the chemicals and equipment used in the manufacture and processing of methamphetamine. After Detective Ryan was contacted by Deputy Hoesman, and told that defendant had been arrested for stealing anhydrous ammonia, he contacted the prosecuting attorney who stated it was permissible to ask defendant for permission to search his residence. Detective Ryan called Deputy Hoesman back and asked him to try to get defendant's consent to search his residence.

Deputy Hoesman read defendant his Miranda rights again using the Greene County form, the text of which is stated in full above. (Gov.Ex.3.) Defendant signed the form indicating he waived his rights. It is dated 7/5/99 at 3:37 PM. No threats, intimidation, promises or misrepresentations were made to induce defendant to sign the form.

Deputy Hoesman presented defendant with a permission to search form used by the Greene County Sheriff's Office and reviewed the contents with him. Defendant stated he understood his rights. (Gov.Ex.4.) The form states:

Permission to Search

> I, [Frank Crabtree] have been informed by [Deputy Cale A. Hoesman/c/o Officer Dave Ryan] who has made proper identification of my CONSTITUTIONAL RIGHT not to have a search made of the premises and property owned by me and/or under my care, custody and control without a search warrant.
>
> Knowing THAT THIS IS MY LAWFUL RIGHT TO REFUSE TO CONSENT TO A SEARCH, I willingly give my permission to the above-named police officer to conduct a complete search of the premises and property, including all buildings and vehicles, both inside and outside the property located at : [540 Larry Elliott Drive, Ballwin, MO 63021]. The above-named police officer further has my permission to take from above-stated premises and property, any letters, papers, materials, or any other property or things the above-named officer may desire as evidence for criminal prosecution in the case or cases under investigation. I further understand that I will receive an itemized receipt for any item that is taken by the above-named officer. This written permission TO SEARCH WITHOUT A SEARCH WARRANT is given

> by me to the above-named police officer voluntarily and without any threats or promises of any kind at [2:25 P]M, on this [6th] day of [July], 19[99] at [Greene County Jail].

Gov.Ex.4.

The form is signed by defendant and dated 7/6/99 at 2:25 P.M. Deputy Hoesman then faxed the signed form to Detective Ryan. Detective Ryan confirmed the address at 540 Larry Elliott Drive was the residence of defendant by checking Ameren UE and learning the utilities were in the name of Frank Crabtree.

A team of detectives went to the residence and knocked on the door. "Robert" answered and two other persons were present. All three were asked to step outside while the residence and property were searched. In an attached garage, the odor of chemicals was so strong, the fire department was called. These fumes can be extremely dangerous and therefore a Haz-Mat team was also called. Detective Ryan suited up in a self-contained breathing apparatus (SCBA) and determined that the level of oxygen was safe. The searching officers located two glass containers, one with a liquid that reacted with air and one with a white powder residue that field tested positive for methamphetamine. Officers also located a digital scale with white powder residue, numerous square pieces of aluminum foil that had burn marks on them and a plastic bag containing methamphetamine. In addition to these items located inside the residence, officers found other items consistent with methamphetamine manufacture in the garage and in the house. These items included two metal canisters with appearance consistent with the presence of anhydrous ammonia, numerous Prestone Starting Fluid cans with holes punched in the bottom, empty ephedrine boxes and stripped lithium batteries. Based on his experience, Detective Ryan testified that all of the seized items are consistent with the manufacture and processing of methamphetamine. The three persons at defendant's residence were released.

Defendant acknowledged during his testimony at the July 26, 2001 hearing that he has no complaints about the July 6, 1999 search.

After the first hearing on May 22,2001, upon inquiry by Ms. Becker, Detective Ryan explained to Ms. Becker that he had several contacts with defendant between the July, 1999 search and the January 20, 2000 search (which will be described below). Ms. Becker informed counsel for defendant immediately upon her receipt of the information concerning the contacts.

The information provided to defendant by the government following the first hearing by way of written communication to counsel is that to the best of Detective Ryan's recollection, near the end of July, 1999, defendant contacted the St. Louis County Police and Detective Ryan set up a meeting with him. They met at a delicatessen and discussed methamphetamine manufacture and trafficking in the area. They did not discuss the seizure of the methamphetamine lab from defendant's address on July 6, 1999. Defendant gave Detective Ryan the names of persons believed to be involved in methamphetamine and Det. Ryan told defendant that if this information panned out, he could possibly receive consideration with respect to the methamphetamine lab seized from his home. Det. Ryan asked defendant to inform him if anyone contacted him wanting to make methamphetamine.

The government further disclosed that in September, 1999, defendant called Det. Ryan and told him about an individual attempting to secure a tank of anhydrous ammonia. This information did not come to fruition.

The government further disclosed that in October, 1999, defendant again contacted Det. Ryan and indicated that someone had dropped off a gallon jar ether at his home. When police attempted to contact defendant at his residence, no one was there.

The government further disclosed that in approximately November, 1999, defendant again contacted Det. Ryan telling him to remove the cameras that the police had installed in his home especially the one in the bedroom ceiling fan. Det. Ryan assured defendant that police had not

installed cameras in his home. This was the last contact between Det. Ryan and defendant until the January 20, 2000 "knock and talk."

Upon receipt of the government's disclosures set out above, counsel for defendant requested and was granted an opportunity to brief the issue. Contrary to the inferences drawn by defendant in his brief, the court finds that there was absolutely no attempt on the part of Det. Ryan to conceal these contacts. He stated clearly in his May 22, 2001 testimony that he had conversations with the defendant on prior occasions. The questioning on this subject at the May 22, 2001 hearing was as follows:

BY MS. BECKER:

Q. Did you identify yourself to Mr. Crabtree?

A. Yes, I did.

Q. And how did you do that?

A. Having spoke with him before, I advised him my name, who I was, Detective Dave Ryan from the St. Louis County Police Department.

Q. When had you spoken to him before?

A. Over the phone, I had had the opportunity to have conversations with Mr. Crabtree.

(Tr.38)

There was no further inquiry made at the first hearing by counsel for defendant on this previous relationship between Det. Ryan and defendant. Any intimation by defendant in his brief that Det. Ryan or the government attempted to conceal these contacts is clearly refuted by the record.

At the July 26, 2001 hearing, the contacts between Det. Ryan and defendant were described at length both by Det. Ryan and defendant, himself. Their testimony was not entirely consistent. Det. Ryan testified that defendant's "attorney from Florida" had contacted his office after the July 6, 1999 search of defendant's residence to inquire about the status of defendant's case. At some time

after that, in late July, defendant called Det. Ryan on the phone and they set up a meeting at a Batteries Plus Store. Det. Ryan believed defendant got his phone number from the attorney. Det. Ryan made no threats or promises to induce defendant to come to the meeting. The meeting took place early in the morning and the Batteries Plus Store was not open. The deli next door may have been open. Det. Ryan testified specifically that he did not discuss defendant's arrest in Greene County or the July 6, 1999 search but spoke about people defendant knew "in the [methamphetamine] trade." He told defendant if he could give him any information, defendant should page him. He gave defendant his card with his number on it. Again, no threats or promises were made to induce defendant to cooperate. Det. Ryan told defendant if he cooperated he would let the prosecuting attorney know if any of defendant's information "panned out." Det. Ryan stated specifically he did not tell defendant he could be arrested for the July 6, 1999 search nor did he threaten to arrest defendant's wife or seize all defendant's business equipment and home. Det. Ryan did not register defendant as a Confidential Informant because he and his supervisor did not believe defendant was reliable.

On the other hand, defendant testified he was at the Batteries Plus Store late in July, 1999 to buy a battery. He said he did not call and arrange a meeting between himself and Det. Ryan. Defendant said he came out of the Batteries Plus Store and Det. Ryan and another detective were sitting outside at a table in front of the deli. Defendant later admitted the Batteries Plus Store was closed. Det. Ryan said "I want to talk to you". Defendant went over. Det. Ryan told defendant he wanted defendant to work with him and that he would help defendant with several things including the items found in the July 6, 1999 search. Defendant testified that Det. Ryan said that if defendant did not work with him, he could arrest defendant or defendant's wife. Defendant said he thought he "had to do it." Defendant said Det. Ryan was persistent and called him one to two times a month

but he also admitted that he had called Det. Ryan as well. He did not elaborate on the specifics of any other contacts before the January 20, 2000 search.

However, Det. Ryan testified defendant called him in September, 1999 saying he had information that a person was coming to his house to buy a tank of anhydrous ammonia. Det. Ryan told defendant to page him when the buyer arrived. He received no page from defendant and had no further contact with defendant on the issue of the anhydrous ammonia buyer.

Det. Ryan testified that in October, November, or December, 1999 (he could not recall the exact time), defendant again contacted him and said someone was dropping off a one gallon jar of ether at his house. When Det. Ryan went to defendant's house the next morning, defendant was not there. Det. Ryan understood that defendant and his son had gotten into an altercation the night before and defendant left the residence.

Det. Ryan also testified about a call he received from defendant in late Fall of 1999. Defendant asked him to remove the camera from the ceiling fan in defendant's bedroom. Det. Ryan told defendant the police had not installed any cameras in his home. Det. Ryan believed defendant made this bizarre allegation because of his methamphetamine-induced paranoia.

The only thing Det. Ryan ever told defendant about his cooperating with the police is that he would tell the prosecuting attorney if the information panned out. He specifically testified he did not say any charges would be dropped and he did not say defendant would not be prosecuted. At no time did Det. Ryan authorize defendant's possession or manufacture or distribution of methamphetamine or his gathering of precursor chemicals. He never asked defendant to make a buy or take part in any pro-active type cooperation. To whatever extent Det. Ryan was aware defendant was represented by counsel, he never spoke to defendant about any of his pending charges. He merely asked him if he knew anyone in the methamphetamine trade and what defendant could find out about them.

The court finds from the testimony and evidence adduced on the issue of the contacts between Det. Ryan and defendant from July 6, 1999 until January, 2000, that as between Det. Ryan and defendant, Det. Ryan is the more credible witness. Although defendant denied he set up the meeting in September the Batteries Plus Store, and originally said he was there buying a battery and saw Det. Ryan when he (defendant) came out of the store, it defies logic that Det. Ryan just happened to be sitting at a table at a deli in front of a closed Batteries Plus Store at seven to eight o'clock in the morning and just happened to run into defendant. It is also not clear how Det. Ryan might have recognized defendant under such circumstances since there is no evidence before the court that he had ever seen defendant before. Defendant eventually changed his testimony and admitted the Batteries Plus Store was closed. While testifying that Det. Ryan was "persistent", defendant also admitted that he called Det. Ryan on numerous occasions. The court finds that the contacts between July, 1999 and January, 2000 were initiated by defendant.

With regard to the January 20, 2000 "knock and talk" and consent search, there was testimony from Det. Ryan at both the May 22 and July 26, 2001 hearings. Defendant testified about the January 20, 2000 incident at the July 26, 2001 hearing only. Once again, their testimony is not entirely consistent.

Subsequent to July 6, 1999, the county police received numerous anonymous tips about drug activity at 540 Larry Elliott Drive and strange odors emanating from the address. Detective Ryan personally spoke to some of the callers but did not know any of their names. The police also received anonymous tips by way of phone messages related to 540 Larry Elliott. None of the tipsters sought compensation and no compensation was offered or given to anyone providing information.

The officers conducted surveillance at defendant's residence at 540 Larry Elliott on various occasions and finally on January 20, 2000, they decided to "knock and talk." Seven officers responded to the residence. The purpose of extra officers for the "knock and talk" was for officer

safety because they had information that a highly dangerous person named Lindsey was living at defendant's house at the time. The officers wore raid jackets but no hoods or masks. Some officers went to the back and side yards. Det. Ryan saw no "No Trespassing" signs. Dressed casually but with "police" clearly identified on their blue jerseys, Detective Ryan and a female DEA agent, Karen Stoetzer, knocked on the door, defendant answered and Detective Ryan identified himself as "Detective Dave Ryan" and reminded defendant they had spoken previously.

Detective Ryan explained they had received complaints about drug activity on the premises and asked defendant for consent to search. Defendant orally agreed while standing at the door. Both agents had their weapons holstered and no threats, intimidation or promises were made to induce defendant to consent. They went to defendant's kitchen table where defendant signed a St. Louis County Police Department Consent to Search form (Gov.Ex.5). The form reads:

> I [Frank Crabtree], hereby consent and agree that police officer(s) of this department may search (describe item and or location in detail) [house, car and property and buildings on the property] and they may retain any article found that may be used as evidence. I give my consent voluntarily. I have not been threatened, nor have any promises been made to me to obtain my consent.

Gov.Ex.5.

The form is signed by defendant Frank Crabtree with the address of 540 Larry Elliott in Ballwin, Missouri. The form was witnessed by SA Karin Stoetzer. Defendant remained at the kitchen table with one of the officers in order that he would be unable to obtain a gun. Detective Ryan testified defendant was free to leave at anytime until he was actually placed under arrest.

The officers searched and in an attached garage located a plastic bucket/crate with certain items in it. Defendant was taken to the garage and Detective Ryan asked "What's this?" and defendant replied "It's my meth lab." Based on his training and expertise, Detective Ryan was familiar with the items in the bucket/crate and knew they were all commonly used in the manufacture of methamphetamine. Defendant then was placed under arrest and advised of his Miranda rights by

reviewing with defendant the St. Louis County Department of Police Warning and Waiver form. (Gov.Ex.6.) The form states:

> Before we ask you any questions, you must understand what your rights are:
>
> 1. You do not have to make any statement at this time and have a right to remain silent.
> 2. Anything you say can and will be used against you in a court of law.
> 3. You are entitled to consult with an attorney before any interview and have an attorney present at the time of interrogation.
> 4. If you cannot afford an attorney, one will be appointed for you.

Gov.Ex.6.

Defendant placed his initials by each of the four rights.[2] The middle portion of the form reads:

> I have read the above statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Gov.Ex.6.

Defendant signed the form at 5:13 P.M. on 1/20/2000 and it was witnessed by SA Karin Stoetzer. The bottom portion of the form reads:

> I hereby certify that the foregoing Warning and Waiver was read by me to the above suspect, that the suspect also read it, and the suspect has affixed his (her) signature hereto in my presence.

Gov.Ex.6.

Detective Ryan signed this part of the form. (Gov.Ex.6.) Defendant did not appear intoxicated or impaired in any way. No threats or promises were made to induce defendant to sign the form.

Det. Ryan transported defendant to the police substation while the officers continued their search. During the ride, they did not discuss defendant's cooperation, the items found in the search, the possibility of the arrest of defendant's wife or the seizure of defendant's property. In a "burn pile" they found more items used in the manufacture of methamphetamine. At the substation,

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[2] A fifth right applies to juvenile suspects only.

Detective Ryan and two other officers re-advised defendant of his Miranda rights and conducted an oral interview. Defendant made oral statements to the effect that he had cooked methamphetamine numerous times both alone and with others. Detective Ryan asked defendant if he would write his statement and defendant agreed. Detective Ryan presented defendant with a St. Louis County Department of Police Voluntary Statement form. (Gov.Ex.7.) The form reads:

> Date [1/20/00] place [West County Substation] time started [6:20] I, the undersigned [Frank Crabtree] am [40] years of age, having been born on [February 21, 1959] in [1959 IL] and who presently resides at [540 Larry Elliott] have been duly warned and advised that I do not have to make any statement at all, answer any questions, nor do anything that might tend to incriminate me. I have been warned that any statement that I may make, can and will be used against me in a court of law. I have also been advised of my right to the advice and presence of counsel before or during this statement, and that if I am unable to hire counsel, one will be appointed for me, without cost or charge to me.
>
> I do not want to talk with an attorney and hereby knowingly and purposefully waive the specified rights and declare that the following voluntary statement is made without threat of physical harm or coercion and that no promises of any nature have been made by any person(s) whomsoever.

Gov.Ex.7.

Following this advice and waiver, there are blank lines on which defendant wrote a statement in his own handwriting. He signed it at 6:32 P.M. on 1/20/00 and it was witnessed by SA Karin Stoetzer and Detective Ryan. (Gov.Ex.7.)

Detective Ryan spoke further to defendant about his own "meth cooks". Defendant said in effect that he would cook at his residence about two or three times a week and get about two ounces from each cook. Detective Ryan asked if he would write his statement and defendant agreed. He gave defendant a voluntary statement form containing the same advice and waiver as set out fully above. Defendant wrote a two page statement on the blank lines. He signed the form at 7:08 P.M. on 1/20/00. It is witnessed by Detective Ryan and SA Karin Stoetzer. (Gov.Ex.8.) No threats, intimidation or promises were made to defendant to induce him to make any oral or written

statements. Following these statements, defendant was released pending application for warrants and was taken back to his residence.

As noted above, defendant's testimony at the July 26, 2001 hearing was not entirely consistent with that of Det. Ryan. First, defendant presented six photographs of his home. Def.Ex.1-6[3]. They show the front door, the west side of the house, a gated privacy fence on the east side of the house, a "keep out" sign, another shot of the east side privacy fence and a view of the rear of the house.

Defendant testified that on January 20, 2000, he was home alone, sitting in his kitchen. He saw two officers run to the rear of his house. One wore a black hood/mask, the other a down jacket with "Police" on it. He looked to the north and saw two more officers similarly dressed. All were armed with weapons in their hands. He answered a knock at the door and saw two persons. Det. Ryan asked if he remembered him. He (Ryan) said there had been numerous complaints of drug activity at the residence and "we want to come in and search." The two officers were dressed casually in vests with "DEA" marked on them. The "lady agent" had her hand on her holstered gun. Det. Ryan's gun was in his hand and he was holding it across his chest. He did not threaten defendant with the gun. Defendant said that after what Det. Ryan told him in July, he said "Okay, come in."[4] He did not feel he could refuse the request. He knew he was surrounded. He said if he had known he had the right to refuse, he would have said leave the property. The officers swept the house. Defendant testified he signed the consent to search at his kitchen table after the officers were already in the house. Det. Ryan said "Bring Crabtree in here" and defendant was escorted to the attached garage. Defendant felt he was under arrest at that time. Defendant thought he had to do

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[3] These photos were referred to in the testimony and admitted into evidence. However, copies were not provided to the court.

[4] Defendant said he was referring to the July meeting at the Batteries Plus Store. This meeting is described *supra*.

what the officers said. Det. Ryan asked defendant if "this is associated with a methamphetamine lab?" Defendant testified he "responded to the question." Defendant was not told he was under arrest; he was merely told he was being taken to the sub-station. On the way to the sub-station, Det. Ryan told defendant if he did not work with him, he (Ryan) would arrest him, or his wife or take his construction equipment. Defendant admitted he signed statements at the sub-station and then he was taken home.

The court finds from the testimony and evidence adduced on the issue of the July 20, 2000 "knock and talk" and consent search, that as between Det. Ryan and defendant, Det. Ryan is the more credible witness. Having heard Det. Ryan's prior testimony on May 22, 2001 and undoubtably having had the advantage of reading the brief prepared by his attorneys dealing with "flack-vested armed agents" trespassing on defendant's property or at least having been made aware of the key issues by his attorneys, defendant's testimony hit all of the appropriate "hot buttons." Although defendant testified in a manner that would allow an inference that his consent was not voluntary because of the coercive effect of the officers in his yard, Det. Ryan's drawn weapon and his previous contacts with Det. Ryan, the court finds that the totality of his testimony lacks credibility. Defendant's demeanor detracts from his believability and his testimony regarding his methamphetamine use is fairly fatal to acceptance of his version of the events. Defendant carefully avoided making a judicial admission when asked by Det. Ryan if the items found in the garage were associated with a methamphetamine lab. Instead of quoting what he actually said, he testified "I responded to the question." This type of response by a person obviously not schooled in the law

shows a lack of forthrightness and a deliberate attempt to testify in a manner specifically designed to aid his case. The same can be said of the rest of his testimony.

CONCLUSIONS OF LAW

1. Arrest of Defendant on 4/7/99

Following the sounding of an alarm at the Tri-County F.S., the manager reported persons in a Ford pickup truck were stealing anhydrous ammonia. He gave a license number and the Greenfield police chief stopped the truck and arrested defendant.

Law enforcement officers may arrest a person without a warrant if they have probable cause to believe that the person has committed or was committing a crime. Gerstein v. Pugh, 420 U.S. 103 (1975); United States v. Watson, 423 U.S. 411 (1976). Probable cause for arrest exists if at the time of the arrest the facts and circumstances within the knowledge of the officers and of which they had reasonable trustworthy information were sufficient to warrant a prudent man in believing that the person had committed or was committing an offense. Beck v. Ohio, 379 U.S. 89, 91 (1964); United States v. Morales, 923 F.2d 621, 623 (8th Cir. 1991). The probable cause determination does not depend on individual facts; rather "it depends on the cumulative effect of the facts in the totality of the circumstances." Id. at 623-24 (internal quotations, modifications and citations omitted). See also United States v. Durile Lee Brown, 49 F.3d 1346 (8th Cir. 1995).

Here, the chief of the Greenfield Police Department had reliable information from Deputy Hoesman that the occupants of a pickup truck with a specific Missouri license plate had been observed stealing anhydrous ammonia. When the chief saw the truck, he stopped it and arrested the

occupants. One of them was defendant. Under the totality of these circumstances, the arrest of defendant was lawful.

2. Oral and Written Statements on 7/5/99

At the Greene County Jail, Deputy Hoesman read defendant his Miranda rights from the Greene County Sheriff's Department form as set out fully in the findings of fact above. After reviewing each of the rights with defendant, defendant indicated he understood his rights and signed the form waiving his rights. (Gov.Ex.1) He then made an oral statement to Deputy Hoesman.

A defendant may knowingly and intelligently waive his rights and agree to answer questions. Miranda v. Arizona, 384 U.S. 436, 479. When the prosecution seeks to introduce in evidence a statement made by a defendant while in custody, it has the burden of showing by a preponderance of the evidence that the statement was made after a voluntary, knowing and intelligent waiver of the Miranda rights by the defendant. Colorado v. Connelly, 479 U.S. 157 (1986). "The requirement that Miranda warnings be given does not, of course, dispense with the voluntariness inquiry" Dickerson v. United States, 530 U.S. 428, 444 (2000). The court must look to the totality of the circumstances surrounding the interrogation to determine whether the waiver was the product of a free and deliberate choice, rather than intimidation, coercion, or deception; and whether the waiver was made with an awareness of the right being abandoned and the consequences of the decision to abandon it. Moran v. Burbine, 475 U.S. 412 (1986).

The statement must be voluntary and not the product of any police conduct by which the defendant's will is overborne. Haynes v. Washington, 373 U.S. 503 (1963); Colorado v. Connelly, 479 U.S. at 170. However, as the Supreme Court stated in Berkemer v. McCarthy, 468 U.S. 420 (1984), "[c]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that law enforcement authorities adhered to the dictates of Miranda are rare." Id. at 433 n. 20; Dickerson, 530 U.S. at 444.

Here, defendant was fully advised of his rights before any questioning. There is no evidence that defendant's will was overborne. In fact, the testimony was clear and unchallenged that Deputy Hoesman did not threaten or intimidate defendant and did not make promises or make misrepresentations to him. Defendant signed the Miranda rights form directly beneath the waiver portion which states he "willingly" would make a statement. Although there was some evidence that defendant had been drinking because of an odor of alcohol about his person, there was no evidence that he was in any way impaired or that his statement was not voluntary. Deputy Hoesman testified that he responded appropriately during the interview. This is clearly not one of the rare cases referred to by the Supreme Court in Berkemer, 468 at 433, n.20 and Dickerson, 530 U.S. at 444. Deputy Hoesman adhered to the dictates of Miranda in every respect and defendant's oral statement should not be suppressed.

The same analysis applies to defendant's written statement. Deputy Hoesman asked if he would reduce his statement to writing and defendant agreed. The voluntary statement form used by the Greene County Sheriff's Department acknowledges that defendant had been warned and advised of his constitutional rights under Miranda and states that knowing and understanding these rights, defendant voluntarily gave the statement of his own free will. (Gov.Ex.2) He wrote the statement in his own handwriting and both the form and the unchallenged testimony states that no promises or hope of reward were made and no fear or threat of physical harm, no coercion, favor, offer, or leniency induced the statement. (Gov.Ex.2) The written statement is voluntary and should not be suppressed. Dickerson v. United States, 530 U.S. 428 (2000).

3. Consent to Search 7/6/99

At the request of Detective Ryan, Deputy Hoesman presented defendant with a Permission to Search form. Deputy Hoesman reviewed the contents of the form with defendant and defendant indicated he understood. The form states clearly that the defendant knew he had a lawful right to

refuse to consent to a search. Defendant signed the form, giving permission to search the premises and property, including buildings and vehicles at his residence at 540 Larry Elliott Drive.

Persons may give up their Fourth Amendment rights by consenting to a search. Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973). Such consent must be given freely and voluntarily. Id. In determining whether a consent to search was given freely and voluntarily, the court must examine the totality of the circumstances under which it is given. United States v. Mendenhall, 446 U.S. 544, 557 (1980); United States v. Chaidez, 906 F.2d 377, 381 (8th Cir. 1990); United States v. Lee, 886 F.2d 998, 1000 (8th Cir. 1989), cert. denied, 493 U.S. 1032 (1990). Consent to search may be given by the criminal suspect or by some other person who has common authority over the premises or item to be searched. United States v. Matlock, 415 U.S. 164, 171 (1974); United States v. Bradley, 869 F.2d 417, 419 (8th Cir. 1989). A search may be valid when based on the consent of a party whom the police reasonably believe to have authority to consent to the search even if it is later determined that the party did not in fact have such authority. Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793, 2800 (1990).

The inquiry must then turn to whether the consent was voluntary. The burden is on the government to show that the consent was voluntary under the totality of the circumstances. See Schneckloth v. Bustamonte, 412 U.S. 218, 248-49 (1973). There are numerous factors a court should consider in determining whether consent was freely and voluntarily given. United States v. Chaidez, 906 F.2d 377, 381 (8th Cir. 1990). In Chaidez, the Eighth Circuit noted that:

> courts should ask whether the person who consented: (1) was detained and questioned for a long or short time, . . . (2) was threatened, physically intimidated, or punished by the police, . . . (3) relied on promises or misrepresentations made by the police, . . . (4) was in custody or under arrest when the consent was given, . . . (5) was in a public or secluded place, . . . or (6) either objected to the search or stood by silently while the search occurred.

Id. at 381 (citations omitted). See also United States v. Mendoza-Cepeda, 250 F.3d 626, 629 (8th Cir. 2001).

Here, the form was presented to defendant without prior questioning on 7/6/99. There is no evidence of threats, intimidation, punishment, promises or misrepresentations by Deputy Hoesman and in fact, the form so states. Although defendant was in custody when he signed the form, there is no evidence that that status alone had any effect on defendant's willingness to consent. Defendant did not at any time object to the search. Under the totality of these circumstances and particularly the fact that defendant knew he had a right to refuse permission, this consent was voluntary and any evidence seized at his residence should not be suppressed.

4. Contacts Between July, 1999 and January, 2000 and Representation by Counsel

There are two lines of "right to counsel" cases under which the 7/99-1/00 contacts between defendant and Det. Ryan arguably can be analyzed. Defendant's arguments seem somehow to be combining the two but they are separate and distinct.

Miranda v. Arizona, 384 U.S. 436 (1966) provides certain Fifth Amendment protections to defendants before charges have been filed. These protections include the right to counsel which is triggered when a person in custody, subject to interrogation, unequivocally asserts his right to counsel. United States v. Davis, 512 U.S. 452 (1994).

Edwards v. Arizona, 451 U.S. 477 (1981) holds that once a suspect asserts the right not only must the interrogation cease but he may not be approached by law enforcement officials for further interrogation until "counsel has been made available to him". Id. at 484-495. Note, however that if Miranda does not apply, Edwards does not apply. Miranda, 451 U.S. 477 (1981). For Miranda to apply, there must be both custody and interrogation. Miranda, 384 U.S. at 444. "If the police do subsequently initiate encounters in the absence of counsel (assuming there has been no break in custody), the suspect's statements are presumed involuntary and therefore inadmissible as substantive evidence at trial..." McNeil v. Wisconsin, 501 U.S. 171, 177 (1991). "The Edwards rule, moreover, is *not* offense specific: once a suspect invokes the Miranda right to counsel for

interrogation regarding one offense, he may not approached regarding *any* offense unless counsel is present." McNeil, 501 U.S. at 177, citing Arizona v. Robertson, 486 U.S. 675 (1988).

As an initial matter, at no time during defendant's custody in Greene County, Illinois, did he assert his Fifth Amendment right to counsel. Edwards therefore is not triggered because the rule of Edwards applies only when a suspect "ha[s] expressed" his wish for the sort of lawyerly assistance that is the subject of Miranda. Edwards, 451 U.S. at 484; McNeil, 501 U.S. at 178. Secondly, during the 7/99-1/00 contacts, defendant was clearly not in custody. Again, the Edwards/Miranda protection is not at issue. The contacts were all either in person or on the telephone and thus Miranda did not apply. Third, although counsel makes much of the issue of whether defendant called Det. Ryan or Det. Ryan initiated the contacts (and clearly the testimony is in conflict) the issue is totally irrelevant. The Miranda/Edwards Fifth Amendment right to counsel simply does not apply and therefore it does not matter whether the contacts were police or defendant initiated. McNeil, 501 U.S. at 177. See also United States v. Holder, 247 F.3d 741, 766 (8th Cir. 2001)(defendant's self-initiated request to speak to police officer amounted to valid waiver of previously asserted Fifth Amendment right to counsel.)

On the other hand, the Sixth Amendment "right to counsel" does not attach until a prosecution is commenced, that is, "'at or after the initiation of adversary judicial criminal proceedings - - either by way of formal charge, preliminary hearing, indictment, information or arraignment.'" McNeil, 501 U.S. at 175 quoting United States v. Gouveia, 467 U.S. 180, 188 (1984) quoting Kirby v. Illinois, 406 U.S. 682, 689 (1972).

Assuming for purposes of this Memorandum only, the court will assume without deciding that charges were pending against defendant in Illinois based on defendant's theft of ammonia and also will assume without deciding that defendant was actually represented by the "attorney in Florida" who called the St. Louis County Police Department to inquire about the status of

defendant's case.[5] The Sixth Amendment right to counsel is offense specific - - that is, it applies only to the case with which defendant is charged. It cannot be invoked once for all future prosecutions. McNeil at 175. Incriminating statements pertaining to other crimes or criminal involvement as to which the Sixth Amendment right has not attached are of course admissible at trial. Maine v. Moulton, 474 U.S. 159, 180 n.6 (1985).

> The police have an interest...in investigating new or additional crimes [after an individual is formally charged with one crime.]...[T]o exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at that time, would unnecessarily frustrate the public's interest in the investigation of criminal activities...

Moulton, 474 U.S. at 179-180

Thus, if charges were pending against defendant in Greene County and defendant therefore had a right to counsel (and was represented by the "lawyer in Florida"), Det. Ryan could not talk to defendant about those charges. Det. Ryan testified repeatedly at both hearings that he did not talk to defendant about the Greene County theft and he did not even talk to him about the July 6, 1999 search of defendant's residence. He only talked to him about defendant's knowledge of persons in the methamphetamine business and the defendant's turning over their names to him. He said he would make defendant's cooperation known to the prosecuting attorney if the information panned out.

The contacts between Det. Ryan and defendant from July, 1999 to January, 2000 in no way violated defendant's right to counsel. Any statements made by defendant during those contacts should not be suppressed.

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[5] There is no clear distinct evidence that charges were actually pending or that defendant was actually represented by counsel. Defendant testified his Greene County case was disposed of by a plea of guilty to a misdemeanor. No date was given as to the initiation of charges or even the date of the plea. The fact that a lawyer called about the status of a case may raise a vague inference that he represented the defendant but it is just as likely he was making inquiries to decide whether or not to take defendant's case.

5. Knock and Talk and Consent Search on 1/20/00

After numerous anonymous tips about drug activity and odor emanating from 540 Larry Elliott Drive, Detective Ryan decided to try a "knock and talk" approach to attempt to get consent from defendant to search his premises.

The "knock and talk" technique is frequently employed by law enforcement officers and has been described with approval by the Eighth Circuit Court of Appeals. United States v. Heath, 58 F.3d 1271, 1273 n.3 (8th Cir. 1995) ("knock and talk" is a casual conversation between officers and the target of an investigation), cert. denied, 516 U.S.892 (1995). Other jurisdictions have also approved the practice: United States v. Miller, 933 F. Supp. 501 (M.D. N.C. 1996) ("knock and talk" procedure consists of knocking on a suspect's door to engage in conversation regarding narcotic activity occurring the suspect's residence and then seeking the resident's consent to search); United States v. Powell, 929 F. Supp. 231 (S.D. W.Va. 1996) ("knock and talk" is where the officer (1) visits the residence (2) identifies himself (3) asks to be admitted and (4) then seeks consent to search); United States v. Roberts, 928 F. Supp. 910 (W.D. Mo. 1996) ("knock and talk" officer knocks on door of room, identifies self and asks to speak to a person about what has just occurred in the room); United States v. Cruz, 838 F. Supp. 535 (C.D. Utah 1993) ("knock and talk" is procedure where officers knock on the premises and seek to enter to talk to the defendant and obtain consent to search thereby obviating need to obtain search warrant and allow more expansive search than would be lawful pursuant to an arrest of defendant).

The utility of this procedure to law enforcement is obvious because it avoids the necessity for securing a search warrant from a judicial officer. There is, of course, potential for abuse but courts such as those listed above and commentators appear to concur that the practice is lawful. See, e.g., United States v. Cruz, 838 F. Supp. at 543, collecting cases; see 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE, § 2.3(b)(1996). For a general discussion of the "knock and talk"

technique under Missouri and Federal law, see Swingle, H. Morley, and Zoellner, Kevin M., Journal of the Missouri Bar, Jan.- Feb., 1999 p. 25-30.

After the first Evidentiary Hearing, defendant's attorneys requested and were granted leave to brief the issues and requested and were granted a second hearing. They challenged the officers' method of applying the "knock and talk" technique and whether defendant's consent was voluntary. Defendant testified that the hooded/masked agents trespassed on his property and that any consent by defendant was a response to the display of police authority, his prior contacts with Det. Ryan and was not voluntary. On the contrary, the credible evidence is that Detective Ryan approached the front door with one female agent. He was dressed in jeans, a ballistic vest and a blue jersey which said "Police" on the front and "St. Louis County Drug Unit" on the back. He greeted defendant by telling defendant who he was and asking if he remembered him from their previous conversations. Even if defendant saw other officers in his yard, this is insufficient for police intimidation. See United States v. Zamoran-Coronel, 231 F.3d 466, 469 (8th Cir. 2000)("the mere presence of some police officers in a confined space does not necessarily exert coercion of a constitutionally-defective nature.")

After Det. Ryan and Agent Stoetzer knocked on defendant's door and he answered, they identified themselves, described why they were there (reports of drug activity and strange odors) and asked defendant for permission to search. No threats, intimidation, or promises were made to induce defendant to consent. The court finds Det. Ryan's gun was not drawn, but even if one accepts defendant's testimony about Det. Ryan's weapon and the guns belonging to the officers in his yard, it is insufficient to invalidate defendant's consent. See United States v. Smith, 973 F.2d 1374, 1376 (8th Cir. 1992)(officers with drawn guns at door did not invalidate consent where the officers did not immediately demand entry, had a brief conversation with occupant, occupant did not refuse entry and no threats or physical force were used at any time.)

Defendant also contends that the conversations between Det. Ryan and defendant from July, 1999 until the "knock and talk" could also have effected the voluntariness of defendant's consent. During these conversations, no promise of future leniency was ever made. As noted above, the only representation of any kind was that Det. Ryan told defendant he would tell the prosecuting attorney about defendant's cooperation if the information panned out. In United States v. Bradley, 234 F.3d 363 (8th Cir. 2000), the Eighth Circuit discussed the factor of promises or misrepresentation separately from talks of becoming a confidential informant and held that consent could be voluntarily given in spite of promises for consideration given in exchange for information. This is because the police did not promise him anything in exchange for his consent. Id. at 366-67(emphasis added). Here, Det. Ryan made no promises or misrepresentation in exchange for the consent to search.

Defendant orally agreed to the search.. There is no requirement that a consent to search be given in writing: ". . . A search may be justified by a voluntary oral consent ...". United States v. Chaidez, 906 F.2d 377, 382 (8th Cir. 1990). They then proceeded to defendant's kitchen table where defendant signed the St. Louis County Police Department Consent to Search form. (Gov.Ex.5) The form describes clearly the scope of the search and states that the consent is voluntary and that the defendant had not been threatened nor any promises made to obtain his consent. Although the form does not state defendant had a right to refuse consent, "awareness of the right to refuse to consent is not necessary for a consent to be voluntary." United States v. Barahona, 990 F.2d 412, 417 (8th Cir. 1993), citing Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973); United States v. Heath, 58 F.3d 1271, 1275-76 (8th Cir.) (prosecution need not prove defendant was fully aware of rights under Fourth Amendment in order to establish voluntariness of consent), cert. denied, 516 U.S. 892, (1995); United States v. Boyer, 988 F.2d 56, 57 (8th Cir. 1993) (defendant's lack of knowledge that he could withhold consent does not invalidate search); United States v. Chaidez, 906 F.2d 377, 380

(8th Cir. 1990). In any event, defendant knew he could refuse to consent because it was clearly stated on the form he signed in July, 1999. (Gov.Ex. 4)

The Eighth Circuit has clearly held that Miranda warnings are not necessary before a consent to search is requested and given. United States v. Washington, 957 F.2d 559, 563 (8th Cir.), cert. denied, 506 U.S. 883 (1992). Because requesting consent to search is not likely to elicit an incriminating statement, such questioning is not "interrogation" and thus Miranda warnings are not required. United States v. Glenna, 878 F.2d 967 (7th Cir. 1989); Cody v. Solem, 755 F.2d 1323 (8th Cir.), cert. denied, 474 U.S. 833 (1985).

[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence." United States v. Matlock, 415 U.S. 164, 177 n.14 (1974). Here, the officers approached defendant's door and briefly spoke to him. Clearly, there were no threats or promises made. Defendant's prior relationship with Detective Ryan adds weight to the voluntariness of his consent. He knew Detective Ryan, had had an on-going relationship with him, had contacted him on numerous occasions and had provided information to him. He had no reason to fear Detective Ryan or Detective Ryan's presence at his front door. Defendant was not in custody, he was in his own home and he did not object to the search. Applying the Chaidez factors as set out above, the government proved by a preponderance of the evidence that the consent was voluntary. Chaidez, 906 F.3d at 381; Mendoza-Cepeda, 250 F.3d at 629.

6. Oral Statement, Pre-Miranda, 1/20/00

During the search, defendant was seated at his kitchen table and was free to leave at all times. While the officers were searching the attached garage at defendant's residence, they found a bucket/crate with certain items in it. Detective Ryan had defendant brought to the garage and asked defendant what it was and he replied "It's my meth lab." Detective Ryan testified that based on his

experience, the items in the bucket/crate were all commonly used in the manufacture of methamphetamine.

Although defendant testified he "felt" he was under arrest, it is an objective test and the undersigned finds that a reasonable person under the circumstances stated above would not believe that he was under arrest or that he was not free to leave. In fact, even after incriminating evidence was found during the July search, defendant was not arrested. He had no reason to believe he was under arrest during the January search. The facts show that the interview was not a custodial interrogation and that the statement made by defendant was voluntary. Because the statement was non-custodial, Miranda warnings need not have been given. Berkemer v. McCarty, 468 U.S. 420 (1984); Beckwith v. United States, 425 U.S. 341 (1976). That the defendant may have been a suspect in this crime does not trigger any right on his part to be given Miranda warnings. California v. Beheler, 463 U.S. 1121 (1983). Defendant's non-custodial statement, "It's my meth lab,"should not be suppressed.

7. Oral and Written Statements on 1/20/00

Following the discovery of the "meth lab," defendant was lawfully placed under arrest and fully and completely advised of his Miranda rights (Gov.Ex.6) as set out in the Findings of Fact above.

As noted previously, a defendant may knowingly and intelligently waive his rights and agree to answer questions. Miranda v. Arizona, 384 U.S. 436, 479. When the prosecution seeks to introduce in evidence a statement made by a defendant while in custody, it has the burden of showing by a preponderance of the evidence that the statement was made after a voluntary, knowing and intelligent waiver of the Miranda rights by the defendant. Colorado v. Connelly, 479 U.S. 157 (1986). "The requirement that Miranda warnings be given does not, of course, dispense with the voluntariness inquiry" Dickerson v. United States, 530 U.S. 428, 444 (2000). The court must look

to the totality of the circumstances surrounding the interrogation to determine whether the waiver was the product of a free and deliberate choice, rather than intimidation, coercion, or deception; and whether the waiver was made with an awareness of the right being abandoned and the consequences of the decision to abandon it. Moran v. Burbine, 475 U.S. 412 (1986).

The statement must be voluntary and not the product of any police conduct by which the defendant's will is overborne. Haynes v. Washington, 373 U.S. 503 (1963); Colorado v. Connelly, 479 U.S. at 170. However, as the Supreme Court stated in Berkemer v. McCarthy, 468 U.S. 420 (1984), "[c]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that law enforcement authorities adhered to the dictates of Miranda are rare." Id. at 433 n. 20; Dickerson, 530 U.S. at 444.

Here, defendant initialed each of his Miranda rights, indicating he understood them. He signed the form which stated he understood his rights, was willing to talk and did not want a lawyer. The form said "I understand and know what I am doing" and further affirmed that no promises or threats, pressure or coercion had been made or used. (Gov.Ex.6) Under the totality of these circumstances, all subsequent statements made by defendant were voluntary and should not be suppressed.

Defendant was then taken to the west county substation where he was orally re-advised of his rights and Detective Ryan and two other officers conducted an interview. Defendant made oral statements about cooking methamphetamine. Based on the analysis above, these statements were voluntary and should not be suppressed. Berkemer, 468 U.S. at 433, n.20; Dickerson, 530 U.S. at 444.

Detective Ryan asked if defendant would reduce his statement to writing and he made two written statements. (Gov.Ex.7 and 8) Both written statements were on a form that acknowledged defendant's knowledge of his individual Miranda rights, acknowledged he knew he did not have to

make a statement at all, stated he did not want a lawyer and that the statements were voluntary. Thus, based on the analysis above, these written statements should not be suppressed. Berkemer, 468 U.S. at 433, n.20; Dickerson, 530 U.S. at 444.

8. Motion of Defendant to Disclose the Identification of Informant [21]
and
9. Defendant's Motion for Order Requiring Government to Disclose Full Nature and Extent of Consideration Offered to or Sought by the Government and its Agents on Behalf of Informant [23]

Detective Ryan testified that all of the tips received concerning drug activity and the strange odors emanating from defendant's residence were from anonymous persons who did not give their names. He testified no consideration was given to any of them. The identity of mere tipsters who are not material witnesses nor necessary to the defense need not be disclosed. McCray v. Illinois, 386 U.S. 300 (1967); Roviaro v. United States, 353 U.S. 53 (1957). Tipsters who merely convey information to the government, who neither witness nor participate in the offense need not be disclosed because they are not material to the outcome of the case. United States v. Harrington, 951 F.2d 876, 878 (8th Cir. 1991); United States v. Bourbon, 819 F.2d 856, 860 (8th Cir. 1987).

ACCORDINGLY,

IT IS HEREBY ORDERED that the Motion of Defendant to Disclose the Identification of Informant is **DENIED**. [21]

IT IS FURTHER ORDERED that Defendant's Motion for Order Requiring Government to Disclose Full Nature and Extent of Consideration Offered to or Sought by the Government and its Agents on Behalf of Informants is **DENIED**. [23]

IT IS HEREBY RECOMMENDED that Government's Motion for a Pretrial Determination of the Admissibility of Defendant's Statements Pursuant to Title 18, United States Code Section 3501 be **GRANTED** and that defendant's statements be found admissible. [11]

IT IS FURTHER RECOMMENDED that the Motion of Defendant to Suppress Evidence and Statements be **DENIED**. [20]

The parties are advised that they have eleven (11) days in which to file written objections to this report and recommendation pursuant to 28 U.S.C. §636(b)(1), unless an extension of time for good cause is obtained, and that failure to file timely objections may result in a waiver of the right to appeal questions of fact. See Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990).

/s/
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this _____ day of August, 2001.